

Sprint

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May 26, 2005

Chairman Pat Miller
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Petition for Declaratory Ruling

05-00152

Dear Chairman Miller:

Enclosed for filing are the original and thirteen (13) copies of United Telephone-Southeast, Inc.'s Petition for Declaratory Ruling. Also enclosed is a check in the amount of \$25.00 for the filing fee.

Please do not hesitate to contact me if you have any questions concerning this filing.

Sincerely yours,

Edward Phillips

Edward Phillips

HEP:sm

Enclosures

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In the Matter of:

Petition by United Telephone-Southeast, Inc.
for Declaratory Ruling by the Tennessee
Regulatory Authority

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Docket No. _____

Petition for Declaratory Ruling

United Telephone-Southeast, Inc. ("Sprint") through its undersigned counsel petitions the Tennessee Regulatory Authority ("Authority") for the issuance of a declaratory ruling pursuant to Tenn. Code Ann. §§ 4-5-223 and 65-2-104. Sprint petitions the Authority for declaratory ruling as to the applicability of provisions of the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO")¹ to DS1 switching for the enterprise market.

Specifically, Sprint requests the Authority to issue an order finding the following:

That paragraph 451 and 47 C.F.R. § 51.319(d)(3) as set forth in the FCC's TRO Order (CC Docket 01-338) issued on August 21, 2003, eliminated the requirement for Incumbent Local Exchange Carriers ("ILECs") to provide DS1 switching for the enterprise market. As such, Sprint no longer has an obligation to provide DS1 switching at Total Element Long Run Incremental Cost (TELRIC) based Unbundled Network Element (UNE) rates and may price these elements at market based prices.

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers.*
CC Docket No 01-338 (FCC 04-179)

It is appropriate for the Authority to exercise its jurisdiction and issue the ruling as requested by Sprint based on paragraph 451 of the TRO and 47 C.F.R. § 51.319(d)(3) as both the TRO and the FCC's rule are enforceable by the Authority. The language of paragraph 451 and 47 C.F.R. § 51.319(d)(3) concerning the elimination of the requirement that ILECs continue to make available DS1 switching on an unbundled bases in the enterprise market was left intact by the United States Court of Appeals for the DC Circuit in its order in *United States Telecom Ass'n v. Federal Communications Commission* (D.C. Cir. March 2, 2004).²

Basis for Petition

Sprint's necessity for requesting the Authority to issue a declaratory order making the above-referenced finding is as a result of the course of dealings between Sprint and The Information Bureau, Inc. ("TIB").³ The relationship between Sprint and TIB began upon TIB's entry into a *Master Interconnection and Resale Agreement for the State of Tennessee* on November 1, 2002. Under the terms of that interconnection agreement, Sprint provided TIB a combination of an unbundled DS1 Loop and unbundled DS1 switching for the enterprise market.⁴ The interconnection agreement entered into between the parties expired on October 31, 2004. The main obstacle preventing the parties from negotiating a new interconnection agreement is TIB's refusal to accept the FCC's decision that DS1 switching is no longer available at TELRIC pricing. TIB is now operating on a month-to-month basis under the expired agreement.

² *Id* at pp 47-50, 61-62.

³ TIB applied for certification as a competitive facilities-based provider on July 11, 2002. The Authority granted TIB's request for certification, after conducting a hearing, in its order entered in Docket No. 02-00774 on October 23, 2002.

⁴ TIB contends that this arrangement is UNE-P, however the interconnection agreement under which TIB purchased these services, which is now expired, does not provide for UNE-P.

During the term of TIB's interconnection agreement with Sprint, the FCC released its TRO order. Under paragraph 451 of the TRO, the FCC specifically found that:

. . . the record evidence establishes that there are few barriers to deploying competitive switches to serve customers in the enterprise market at the DS1 capacity and above, and thus no operational or economic impairment on a national basis. Consequently, we establish a national finding that competitors are not impaired with respect to DS1 enterprise customers that are served using loops at the DS1 capacity and above. DS1 enterprise customers are characterized by relatively intense, often data-centric, demand for telecommunications services sufficient to justify service via high-capacity loops at the DS1 capacity and above . . .⁵

Also, as part of the TRO order, the FCC established certain rules concerning the availability of unbundled network elements. One of these rules is codified at 47 C.F.R. § 51.319(d)(3), which states that “[a]n incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops . . .” The rule goes further to state that this national standard can only be set aside upon a filing for waiver by a state commission in accordance with the standard set forth under 47 C.F.R. § 51.319(d)(3)(i), and if the FCC grants the request. Further, the TRO provided that a request for waiver had to be filed by a state commission within ninety (90) days from the effective date of the TRO, which was October 2, 2003. To the best of Sprint's knowledge, the Authority did not petition the FCC for a waiver under 47 C.F.R. § 51.319(d)(3)(i). As such, the standard is clear; an ILEC such as Sprint does not have to provide access to switching on an unbundled bases to customers requesting DS1 capacity and above.

Course of Dealings Between the Parties

Following execution of the November 1, 2002 interconnection agreement between the parties, TIB ordered and Sprint provided the combination of an unbundled DS1 loop and

⁵ Citations to footnotes omitted

unbundled DS1 switching, also referred to as unbundled ISDN-PRI, so TIB could provide dial-up internet access to its customers. Following the issuance of the TRO, Sprint provided notice on January 5, 2004 to all CLECs that it was no longer obligated to provide unbundled DS1 switching and that it would no longer “process new CLEC orders for UNE-P ISDN PRI or stand alone ISDN PRI Port products.” The notice to the affected carriers that were purchasing enterprise services was also posted on Sprint’s Local Wholesale services website. In addition, the option to order such services was removed from Sprint’s online ordering system, Integrated Request Entry System (“IRES”).

In July, 2004, TIB attempted to place orders for unbundled ISDN-PRI but was unable to do so using IRES. TIB subsequently contacted its account manager to ask why IRES no longer supported the ordering of unbundled ISDN-PRI. Sprint informed TIB that Sprint was no longer required to offer ISDN-PRI at cost-based rates and the option had been removed from IRES. In the interest of expediency, TIB placed orders for ISDN-PRI at the wholesale discount.

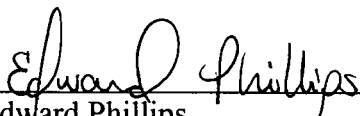
Several additional conversations took place between representatives from Sprint and TIB over the next two months in an attempt to resolve the issue. TIB filed a billing dispute with Sprint on September 16, 2004 in the amount of \$2600. Sprint responded via letter on October 6, 2004, reiterating that Sprint was no longer obligated to offer unbundled ISDN-PRI. However, in an effort to satisfy TIB’s dispute, Sprint offered to apply a \$1600 credit to TIB’s account, which represented an amount in excess of the difference between the resale rate and the cost-based rate for the time period beginning when the circuits were ordered through the end of TIB’s current contract. TIB refused Sprint’s offer of this \$1600 credit, but in a further effort to resolve the dispute, Sprint applied a credit of \$2600 (i.e., the full amount of TIB’s dispute) to TIB’s account on February 15, 2005.

Sprint has made several unsuccessful attempts to renegotiate the interconnection agreement with TIB to bring the agreement into conformity with the TRO and the Triennial Review Remand Order.⁶ TIB has unfortunately refused to acknowledge the plain language of the FCC's orders and the applicable rules. In addition, TIB has made no payment nor filed any billing dispute on its account since October 2004.

Conclusion

Based on the foregoing Sprint respectfully requests the Authority issue a declaratory ruling finding that ILECs are not required to provide DS1 switching for the enterprise market pursuant to paragraph 451 of the TRO and 47 C.F.R. § 51.319(d)(3), and as a result of such a ruling Sprint may price DS1 switching at a market-based price. In addition to making this finding, Sprint also respectfully requests the Authority give expedited treatment to this petition so that the matter can be considered, and an order issued as soon as practicable so as to avoid running afoul of the sixty (60) day time limit established by Tenn. Code Ann. § 4-5-223(c).⁷

Respectfully submitted this, the 26th day of May, 2005.



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⁶ See *Order on Remand In the Matter of Unbundled Access to Network Element Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Feb. 4, 2005

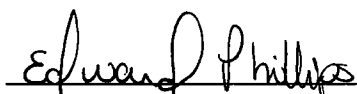
⁷ Tenn. Code Ann. § 4-5-223(c) states as follows:
[i]f an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition of United Telephone-Southeast, Inc. upon Kirti Bajwa by depositing a copy in the United States Mail, first-class postage prepaid.

This 26th day of May, 2005.

Kirti S. Bajwa, President
The Information Bureau, Inc.
113 S. Church Street
P. O. Box 49
Mountain City, TN 37683



Edward Phillips
United Telephone-Southeast, Inc.